



CANBERRA

Magistrates Chambers
ACT Magistrates Court
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8 September 2016

Ms A Cahill-Lambert AM
Chair
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2608

Dear Ms Cahill-Lambert

Thank you for your invitation to make a submission regarding this year's determination of the remuneration of magistrates. This submission is made on behalf of all ACT magistrates and special magistrates. Magistrate Karen Fryar and Magistrate Peter Morrison (on behalf of the magistrates) would also welcome the opportunity to meet with the Tribunal to speak to this submission.

Relativity of jurisdiction

In making this submission we appreciate the consideration given by the Tribunal last year to the issues concerning work value which we put before it. However we continue to submit that significant jurisdictional increases in recent years together with the associated increases in the breadth, diversity and complexity of work undertaken by this court are yet to be fully reflected in the remuneration of ACT magistrates.

You are, of course, aware that the Australian Capital Territory has a two-tiered court system. We have always considered the role of, and the work undertaken by, ACT magistrates is more akin to that of District or County Court judges in other jurisdictions which have a three-tiered court system. Indeed, to reinforce a comparison made in our submission last year, work undertaken in the Industrial Court and much of the work undertaken in the Childrens Court jurisdictions, commercial leasing matters, the more serious criminal matters that we deal with and civil matters commenced in the ACT Magistrates Court since the jurisdiction was substantially increased, is all work of at least equivalent value and complexity as that done in second tier courts in all other jurisdictions.

Certainly this relativity to second tier courts such as the District or County Courts has been recognised in relation to the remuneration paid to Federal Circuit Court judges (formerly referred to as Federal Magistrates). The details of their latest relevant remuneration determination are set out in Table A. It should be noted however that the jurisdiction of the ACT Magistrates Court is in fact of greater breadth and diversity than that of the Federal Circuit Court. We urge the Tribunal to reconsider this aspect of the value of the role of magistrate in the ACT.

Magistrates as Coroners

In addition to those factors, we further submit that the dual roles undertaken in the ACT of magistrate and coroner have not yet been fully examined and is an aspect of the work value of magistrates that has to date been largely overlooked and thus significantly undervalued. It is accordingly the matter that we ask the Tribunal to consider most carefully this year.

In the ACT all magistrates are also appointed as coroners. That is not unique to the Territory but the Territory is the only Australian jurisdiction in which, as a matter of course, all magistrates, in addition to their daily magisterial duties, also perform regular duties as a coroner. The benefit to the community in the ACT from the practical application of this reality is significant.

In other words, in all other Australian jurisdictions, including those where magistrates hold dual appointments (both as magistrate and coroner) appointees fill either a full time role as a magistrate or a full time role as a coroner but not both, unless special circumstances exist. For example it may be necessary for a magistrate in a remote community in Western Australia to also perform the function of a coroner. However in this instance the coronial

task tends to relate to relatively straightforward matters, with more significant or high profile cases being undertaken by specifically appointed State Coroners.

The arrangement here gives the Territory the benefit of having all coronial duties performed in this jurisdiction without the need for a dedicated resource and the expense of a full time coroner. This outcome is achieved by the concomitant requirement for all magistrates to perform all of the duties required of a coroner, in addition to their judicial duties, and without specific additional resourcing. That requirement adds significantly to the value of the work of magistrates in the Territory.

We note that the Chief Coroner in her latest annual report, a copy of which is attached, has advised the Attorney General that there is now sufficient complexity of work undertaken by the ACT coroners to justify the appointment of a dedicated coroner. The Government has given no indication this is likely to occur in the foreseeable future.

Coronial duties

Some explanation of the extent of the coronial role is appropriate. The coronial jurisdiction is set out principally in sections 13, 18 and 19 of the *Coroners Act 1997* (attached at Table B). In a nutshell the coroner must –

- hold an inquest to determine the manner and cause of death where, for example, the death of a person has occurred under suspicious, violent or unnatural circumstances or by an accident, after having undergone an operation or procedure or where a doctor has not given a certificate about the cause of death, or where the person dies in custody;
- hold an inquiry into the cause and origin of fires in certain circumstances;
- hold an inquiry into the cause and origin of a disaster if requested to do so by the Attorney-General.

The breadth of the jurisdiction requires each coroner to be informed across a range of diverse specialities and areas of knowledge in order to properly undertake their coronial duties. Another feature unique to the ACT is the extension of the ACT coronial jurisdiction to the Jervis Bay and Australian Antarctic Territories. Each of these Territories by virtue of its location and environment brings additional complexities and issues not observed elsewhere.

Case examples

The following examples demonstrate the extraordinary range of issues that the ACT coroners are required to consider.

- Machinery failure which results in a death requires consideration of issues of metal alloy manufacturing defects and product safety requirements which may extend internationally;
- A death in a nursing home may necessitate an examination of the regulatory framework for aged care facilities and a balancing of matters of patient privacy and care with resourcing issues and the standards of appropriate care and oversight;
- A drowning in a backyard pool may require the review of local standards including building codes and pool regulations, as well as a consideration of the process of public policy development in this safety area;
- Any workplace death, particularly on a construction site, is likely to raise workplace health and safety issues including complex questions in relation to engineering issues, appropriate work practices and what is the appropriate level of oversight for dangerous tasks;
- Deaths from overdoses of prescription medications can raise issues concerning the appropriateness of prescribing practices by medical practitioners and hospitals, possible doctor and pharmacy shopping, and the utility of potential information sharing mechanisms between doctors and pharmacies such as real time prescribing monitoring and alerts;
- Deaths in custody require at least the examination of issues concerning the supervision, monitoring, and health treatment of prisoners;
- Deaths of patients in hospitals often require a thorough examination of medical and hospital procedures including the correctness of diagnosis and the appropriateness of care. They often call for the evaluation of independent expert medical opinions.


For every matter that involves the holding of a public hearing, there are many more that are able to be finalised by work in chambers (without the need for a hearing) but can by no means be considered as simple or straightforward matters. Coroners are often called upon to brief experts and then to consider their reports in order to be able to make the findings required. Such cases invariably also involve referring those reports to the relevant family, and considering their views.

Consideration

We submit that the coronial work performed by the ACT magistrates adds at least 12% to the value of the work of the magistrates. We accept that some notional account will have already been taken of this coronial role, but in our respectful submission that account has thus far been inadequate.

Having proper regard to the work value of the dual role we undertake, together with the other relativity issues identified above, and accepting that some allowance has already been made for the value of the extra coronial role, our submission is that the appropriate response is to increase the magistrates' remuneration this year by 6% to \$355,834 per annum.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karen M Fryar', written in a cursive style.

Magistrate Karen M Fryar AM

(on behalf of the ACT magistrates)

Table A

Federal Circuit Court of Australia Determination 2015/18 (including 2016/09) as of 9/08/16

Chief Judge \$420,810

Judge \$355,130

Table B

Coroner's Act 1997

13 Coroner's jurisdiction in relation to deaths

(1) A coroner must hold an inquest into the manner and cause of death of a person who—

(a) dies violently, or unnaturally, in unknown circumstances; or

(b) dies under suspicious circumstances; or

(c) dies and the death appears to be completely or partly attributable to an operation or procedure (other than an operation or procedure prescribed by regulation for this paragraph); or

(d) dies after having undergone an operation or procedure and in circumstances that, in the opinion of the Chief Coroner, should be better ascertained; or

(e) dies and a doctor has not given a certificate about the cause of death; or

(f) dies not having been attended by a doctor at any time within the period commencing 6 months before the death; or

(g) dies after an accident where the cause of death appears to be directly attributable to the accident; or

(h) dies, or is suspected to have died, in circumstances that, in the opinion of the Attorney-General, should be better ascertained; or

(i) dies in custody.

18 Coroner's jurisdiction in relation to fires

(1) A coroner must hold an inquiry into the cause and origin of a fire that has destroyed or damaged property if asked to do so by the Attorney-General.

(2) A coroner may (at the request of the owner or occupier of destroyed

or damaged property or on the coroner's own initiative) hold an inquiry into the cause and origin of a fire if the coroner considers that an inquiry should be held.

(3) Where—

(a) the owner or occupier of destroyed or damaged property requests a coroner to hold an inquiry into the cause and origin of a fire; and

(b) the coroner is of the opinion that an inquiry into the cause and origin of the fire should not be held;

the coroner must give to each owner or occupier who requested that an inquiry be held written notice of the opinion and the grounds for the opinion.

19 Coroner's jurisdiction in relation to disasters

(1) The Chief Coroner must, if requested to do so by the Attorney-General, cause an inquiry to be held into the cause and origin of a disaster.

(2) The Chief Coroner must not cause an inquiry to be held into the cause and origin of a disaster except with the consent of the Attorney-General.